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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,087	01/29/2004	Harald Michi	10191/3439	4599
26646 7590 05/27/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
MANCHO, RONNIE M				
ART UNIT		PAPER NUMBER		
3664				
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05/27/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/767,087

Applicant(s)

MICHIE ET AL.

Examiner

RONNIE MANCHO

Art Unit

3664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 7, 9 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 9 and 11-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/06/08 has been entered.

Remark

2. The examiner appreciates applicant's amendments which put the claims in better form for examination.

As such, most of the 112 first and second rejections have been vacated in view of the amended claims. The non-compliant notice mailed to applicant on 1/8/09 has been vacated. Any inconvenience to the applicant is regretted.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, the limitation, “the actual speed” lacks antecedent bases.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

6. Claims 1-3, 6, 7, 9, 11-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Michi et al (7321818).

Regarding claim 1, Michi et al disclose a speed controller for a motor vehicle:
comprising:

an input device 14 (fig. 1) configured to receive input of a desired speed by a driver (col. 3, lines 33-44) , wherein a plurality of operating modes (ACC mode, col. 3, lines 55, 56; Stop and go mode, col. 4, lines 56-59) differing in functional scope are provided by the speed controller, which operating modes are configured to be activated in different speed ranges (speed

range from V_1 to V , and speed range from zero to V_2 ; fig. 2), each operating mode having a corresponding number of speed-regulating functions; and

a decision unit 12 configured to determine, using predefined criteria, whether a change in the desired speed input by the driver is to be interpreted as a command for changing the current operating mode (col. 3, line 40 to col. 4, line 7);

wherein a first of the plurality of operating modes is an operating mode for a first predetermined vehicle speed range (V_1 to V ; fig. 2) that is configured to be activated only above a limiting speed V_s (see V_1 ; fig. 2; col. 3, line 40 to col. 4, line 11), and a second of the plurality of operating modes is configured for a second predetermined vehicle speed range (Zero to V_2 ; fig. 2), wherein a lower limit of the first predetermined vehicle speed range is equal to the limiting speed V_s (see V_1 ; fig. 2; col. 3, line 40 to col. 4, line 11), and wherein a lower limit (i.e. zero) of the second predetermined vehicle speed range is lower than the limiting speed V_s (i.e. V_1 ; fig. 2), and wherein an upper limit (i.e. V_2 ; fig. 2) of the second predetermined vehicle speed range is greater than the limiting speed V_s (i.e. V_1 ; fig. 2) and lower than an upper limit (i.e. V ; fig. 2) of the first predetermined vehicle speed range (i.e. V_1 to V ; fig. 2), and wherein the first predetermined vehicle speed range (i.e. V_1 to V ; fig. 2) and the second predetermined vehicle speed range (Zero to V_2 ; fig. 2) at least partially overlap (overlap between V_1 and V_2 ; col. 4, lines 8-11), and wherein the second operating mode provides in certain instances an automatic braking of the vehicle to a standstill (stop-and go mode; col. 3, lines 61-67), and wherein the first operating mode (ACC mode, col. 3, lines 45-59) does not provide the automatic braking of the vehicle to a standstill;

wherein the decision unit 12 (fig. 2) is configured to automatically cause, when the speed of the vehicle decreases to below the limiting speed V_s , a change from the first operating mode (ACC mode, col. 3, lines 45-59) into the second operating mode (stop-and go mode; col. 3, lines 61-67), and then automatically limits the desired speed to a value permitted in the second operating mode (col. 3, lines 61-67);

wherein the decision unit 12 (fig. 2) is configured to cause a change from the second operating mode into the first operating mode only if the driver provides to the input device an input of a desired speed greater than the upper limit of the second predetermined vehicle speed range (col. 3, line 40 to col. 4, line 11);

wherein when, in the second operating mode (i.e. stop-and-go mode), the driver does not input a new desired speed to the input device 14 and the driver increases the speed of the vehicle by operating a gas pedal of the motor vehicle to exceed a threshold speed equal to the limiting speed plus a predetermined positive value (i.e. at V_2 ; fig. 2), while the actual speed of the vehicle lies within a predefined speed range the decision unit is configured to deactivate the speed controller (col. 4, lines 22-26).

Regarding claim 2, Michi et al (col. 4, lines 12-20) disclose the speed controller of claim 1, further comprising:

a display device 24, 26 (fig. 2) adapted to display the current operating mode.

Regarding claim 3, Michi et al (col. 4, lines 12-20) disclose the speed controller of claim 1, further comprising:

a signal device to signal (acoustic signal, etc; col. 4, lines 67+) to the driver a change in the current operating mode.

Regarding claim 6, Michi et al (col. 4, lines 12-20) disclose the speed controller of claim 1, wherein the decision unit 12 automatically causes a change from the first operating mode into the second operating mode when the desired speed is lower than the limiting speed V_s and when the actual speed of the vehicle is less than the upper limit of the second predetermined vehicle speed range, the upper limit being equal to $V_s + h_1$, where h_1 has a non-negative value (h_1 is the space between V_1 and V_2 in fig. 2; col. 3, line 40 to col. 4, line 7).

Regarding claim 7, Michi et al (col. 4, lines 12-20) disclose the speed controller of claim 1, wherein the decision unit automatically causes the change from the first operating mode into the second operating mode when one of the following occurs:

- a) the desired speed is increased to a threshold value which is at least equal to the limiting speed (col. 3, line 40 to col. 4, line 7); and
- b) the actual speed of the vehicle does not increase to the limiting speed within a predefined time interval (col. 3, line 40 to col. 4, line 7).

Regarding claim 9, Michi et al (col. 4, lines 12-20) disclose the speed controller of claim 1, wherein the decision unit deactivates the speed controller when, in the second operating mode, the desired speed is less than or equal to the limiting speed V_s and the actual speed is greater than a threshold value $V_s + h_2$, where h_2 has a non-negative value (col. 3, line 40 to col. 4, line 7).

Regarding claim 11, Michi et al (col. 4, lines 12-20) disclose the speed controller of claim 1, wherein the decision unit activates the speed controller in the first operating mode when, upon the input of the desired speed, the actual speed of the vehicle is greater than the limiting speed and the decision unit activates the speed controller in the second operating mode and limits the

desired speed when, upon the input of the desired speed, the actual speed of the vehicle is less than or equal to the limiting speed (col. 3, line 40 to col. 4, line 7).

Regarding claim 12, Michi et al (col. 4, lines 12-20) disclose the speed controller of claim 11, wherein the decision unit activates the speed controller in the second operating mode only when a target object is located by a distance sensor system and the distance from the vehicle to this target object lies within a predefined range (col. 3, line 40 to col. 4, line 7).

Regarding claim 13, Michi et al (col. 4, lines 12-20) disclose the speed controller of claim 12, wherein the decision unit automatically deactivates the speed controller in the second operating mode when the target object is lost by the distance sensor system (col. 2, lines 8-14) and is not re-detected within a predefined time span (col. 3, line 40 to col. 4, line 7).

Regarding claim 14, Michi et al (col. 4, lines 12-20) disclose the speed controller of claim 12, wherein the decision unit automatically deactivates the speed controller in the second operating mode when the distance between the vehicle and the target object becomes greater than a predefined value (col. 3, line 40 to col. 4, line 7).

Response to Arguments

7. Applicant's arguments with respect to claims 1-3, 6, 7, 9, 11-14 have been considered but are moot in view of the new ground(s) of rejection.

Communication

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RONNIE MANCHO whose telephone number is (571)272-6984. The examiner can normally be reached on Mon-Thurs: 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tran Khoi can be reached on 571-272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronnie Mancho
Examiner
Art Unit 3664

5/18/2009

/R. M./

Examiner, Art Unit 3664